

EXHIBIT 3

1 - VOLUME C -
2 IN THE UNITED STATES DISTRICT COURT
3 IN AND FOR THE DISTRICT OF DELAWARE
4
5 CORDIS CORPORATION, : CIVIL ACTION
6 Plaintiff :
7 :
8 vs. :
9 :
10 MEDTRONIC AVE, INC., BOSTON :
11 SCIENTIFIC CORPORATION and :
12 SCIMED LIFE SYSTEMS, INC., :
13 Defendants : NO. 97-550 (SLR)
14
15 BOSTON SCIENTIFIC CORPORATION : CIVIL ACTION
16 and SCIMED LIFE SYSTEMS, INC., :
17 Plaintiffs :
18 :
19 vs. :
20 :
21 ETHICON, INC., CORDIS CORP. :
22 and JOHNSON & JOHNSON :
23 INTERVENTIONAL SYSTEMS CO., :
24 Defendants : NO. 98-19 (SLR)
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32 MEDTRONIC AVE, INC., BOSTON :
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34 SCIMED LIFE SYSTEMS, INC., :
35 Defendants : NO. 98-197 (SLR)
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1 invention obvious or anticipated.

2 Q. And why is it that you believe that Dr. Palmaz's
3 combination of elements in Claim 23 is not obvious?

4 A. Because it is a truly unique combination. You
5 can't as I said previously think did Dr. Palmaz invent
6 slots, did he invent a tube, did he invent metal. What
7 he invented was this unique combination that you put
8 together to allow patients to be treated without major
9 surgery, to allow a procedure to be done through the
10 lumen without opening up exposing, cutting or doing any
11 of the sort of things that Ersek taught.

12 Q. Let's take a look at Claim 23 again.

13 Now, Mr. Badenoch asked you some questions
14 about commercially successful coronary balloon expandable
15 stents. And I'm not sure he was focusing exactly on
16 what your testimony was.

17 Do you have an opinion as to the relationship
18 between the elements set forth in Claim 23 and successful
19 balloon expandable coronary stents?

20 A. Yes. I believe that all of the successful balloon
21 expandable coronary stents use this unique combination of
22 elements as put forward in Dr. Palmaz's Claim 23 of his
23 '762 patent. They use this combination of elements in
24 the way that Dr. Palmaz taught.

25 Q. Do they all have first diameters for intraluminal

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1 Guidant, ACS company. Again, here are the slots running
2 around and that allow it to open up. All of the
3 commercially expandable commercially balloon expandable
4 stents use the invention of a slotted tube structure that
5 can open up to a second diameter to support the passageway.

6 Q. Let's add Cordis' BX Velocity. Does Cordis' BX
7 Velocity use the slots of Claim 23?

8 A. Yes. It's the one that has the right to do so.
9 It practices Dr. Palmaz's invention. Here is the stent,
10 the BX Velocity. It's the same basic stent that produces
11 the Cipher, the drug-eluting stent and here is the slot,
12 here it's running around the circumference and this is
13 what allows it to expand and support the wall.

14 And you can see the similarity. Here is the
15 Cordis product. Here's the Boston SciMed product.
16 Here's the AVE product, here's the ACS product. They
17 are all using Dr. Palmaz's invention.

18 Q. Is there any dispute in this case that BSC's NIR
19 stent has longitudinal slots?

20 A. No. I don't think there's any dispute.

21 Q. In fact, is there any dispute in this case about
22 any limitation at all except whether the NIR stent has
23 a wall substantially -- of substantially uniform
24 thickness?

25 A. My understanding is that Boston SciMed are not

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34 Defendants : NO. 98-197 (SLR)
35 - - -
36 Wilmington, Delaware
37 Thursday, March 17, 2005
38 9:35 o'clock, a.m.
39 - - -
40 BEFORE: HONORABLE SUE L. ROBINSON, Chief Judge, and a jury
41 - - -
42 Valerie J. Gunning and
43 Leonard A. Dibbs,
44 Official Court Reporters
45

Fischell - cross

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1 Palmaz was the only one that improved the long-term
2 results.

3 So it was, even though it was only
4 technically labeled for fixing torn vessels from balloons,
5 as I already alluded to, almost every vessel is torn by
6 balloons. You could have used it if you wanted, but it
7 wasn't as good a stent.

8 Q. Anyway, between '94 and '97, Cordis essentially
9 has the market to itself and then other companies, like
10 Boston Scientific, introduce more flexible stents; right?

11 A. They introduced -- they bought Medinol or did a
12 marketing arrangement with Medinol and introduced, I
13 guess in 1998, the Nir stent.

14 Q. And other companies also introduced more flexible
15 stents?

16 A. Guidant introduced a stent called the Multi-Link
17 stent, which was again sort of a second-generation stent
18 that used Palmaz structures and was more flexible and
19 was very widely and quickly adopted. It was a second-
20 generation. They said, Hey, we can do better, make it
21 a little more flexible, maybe. We see Dr. Palmaz's
22 piece in there. We can maybe tweak that, make it a
23 little better and sell a lot of stents. Very competitive
24 market.

25 Q. And I think you just mentioned that the Nir stents

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1 were more flexible?

2 A. I believe they were. That's one reason that they
3 began to pick up market share from the original
4 Palmaz/Schatz stents. They were viewed as a little easier
5 to push down the coronaries.

6 Q. Once those stents came in, Palmaz/Schatz was
7 effectively driven right off the market; right?

8 A. Certainly, the Palmaz/Schatz stent, because of
9 stents like the Nir and the Guidant stents, all of which
10 used the Palmaz invention, but they all came in, saw a
11 lot of money to be made and began selling stents to
12 compete with Johnson & Johnson, yes.

13 Q. And the reason they drove the Palmaz/Schatz off
14 the market is because they were more flexible; right?

15 A. I think I already said, I think they were more
16 flexible and that's why they were accepted.

17 Q. You, yourself, started to use those new stents, the
18 Nir stent, once they were introduced?

19 A. Yes. I think the Nir and the Multi-Link stents
20 were easier to use. They had the same sort of
21 scaffolding properties that the Palmaz stent had and
22 gave similar long-term results as the Palmaz, unlike the
23 Cook stent, and they were a second generation that were,
24 in my opinion, you know, a slightly better, better
25 mousetrap than the original Palmaz/Schatz, even though